



The Hart-Devlin Debate Revisited

Prineetha Bandaranayke*

Abstract

The inextricable link between law and morality has long been a subject of intense examination within legal scholarship. These inquiries delve into the ethical foundations that confer legitimacy and effectiveness upon legal structures. This article delves into the historical evolution, theoretical perspectives, and contemporary ramifications of the dynamic interplay between law and morality, contributing to a comprehensive analysis of the seminal Hart-Devlin debate following the publication of the Wolfenden Report in 1957. The Hart-Devlin debate resonates in the modern discourse on enforcing morality through legal mechanisms. While both Devlin and Hart acknowledge the significance of public morality upheld by lawful means, their contrasting interpretations—conservative and liberal—underscore the intricate complexities of this debate. The inherent tension between safeguarding individual morality through privacy and integrating society through public morality remains a central contention. The enduring presence of these issues, misunderstandings, and tensions underscores the ongoing relevance of the Hart-Devlin debate in shaping the contours of legal and moral discourse in the modern era. As societies navigate the delicate balance between protecting individual rights and fostering communal values, the insights gleaned from this debate continue to inform and guide the evolving landscape of law and morality.

Keywords: *criminal law, Hart-Devlin debate, jurisprudence, law and morality, Wolfenden Report*

* LL.B. (Hons) (Colombo), Lecturer (Probationary), Faculty of Law, University of Colombo, Sri Lanka

Introduction

‘Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief, and crude terms, not the law’s business.’

*Report of the Committee on
Homosexual Offences and Prostitution¹*

The dynamic interplay between law and morality has been a central and enduring focus within jurisprudence, sparking profound debates and investigations into the essence of legal systems and their link to societal values. The convergence of law and morality as intertwined concepts has captured the interest of legal scholars, philosophers, and practitioners over centuries. This intricate relationship delves into the fundamental inquiries concerning the origins, interactions, and influences of law and morality within legal systems. This raises pivotal philosophical questions about the ethical bedrock that lends legitimacy and effectiveness to legal frameworks. This study aims to delve into the historical evolution, theoretical viewpoints, and contemporary ramifications of the dynamic interplay between law and morality, contributing to a profound analysis of the debate between Lord Devlin and Hart, which followed the publication of the Wolfenden Report of 1957.

Different Jurisprudential Perspectives on Law and Morality

The function of morals in the law has always been a focal concern of legal and political philosophers. It has become one of the most significant and fundamental questions that animates the debates of today’s jurisprudence.² There are two opposing positions. The first is ‘moral realism’, which proposes that particular moral virtues exist

¹ Sir J. Wolfenden, *Report of the Committee on Homosexual Offences and Prostitution* (Cmnd 247, para 61).

² D Plunkett & S Shapiro, ‘Law, Morality, and Everything Else: General Jurisprudence as a Branch of Metanormative Inquiry’ (October 2017) *Ethics* 37-68.

independently of our minds or convention. Natural lawyers and those of a Kantian persuasion generally march under this banner.³ Secondly, there is the sceptical path, most closely associated with utilitarians, such as Jeremy Bentham, and legal positivists like Hans Kelsen, who deny the existence of any deontological, mind-independent moral values.⁴ This section will comprehensively analyse these two viewpoints.

Natural Law Theory

The central argument of traditional natural law maintains that the legitimacy of a law hinges on its moral content. Martin Freeman concisely expresses the significance of natural law in the ongoing assertion that objective ethical principles are grounded in the essence of the universe and can be uncovered through rational examination.⁵ This belief can be found in the maxim *lex injusta non est lex*-an unjust law is not a law. Frequently credited to St. Thomas Aquinas, this maxim embodies his belief that for laws to be deemed valid, they must harmonise with the tenets of justice and morality.⁶ Consequently, a law that opposes the foundational ideals of justice and natural law cannot genuinely be classified as a law and lacks the ethical credibility to demand compliance. Ronald Dworkin affirms this view, characterising natural law as ‘any theory which makes the content of law depend on the correct answer to some moral question.’⁷

Lon Fuller introduced the concept of an inherent moral dimension within the context of the law.⁸ He distinguished between the ‘internal’ and ‘external’ moral aspects of law, suggesting the presence of an ‘inner morality’ that provides structure to the legal system. Fuller outlined these principles of procedural natural law as a comprehensive set of eight cardinal principles-generality, promulgation, non-retroactivity,

³ E Bodenheimer, *Jurisprudence* (Harvard University Press 1981) 246.

⁴ *ibid.*

⁵ MDA Freeman, *Lloyds Introduction to Jurisprudence* (7th edn., Sweet and Maxwell 2001) 91.

⁶ R McInery, ‘Aquinas’s moral theory’ (1987) *Journal of medical ethics* 31.

⁷ RA Dworkin, ‘Natural Law Revisited’ (1982) 34 *University of Florida Law Review* 165.

⁸ L Fuller, *The Morality of Law - Revised Edition* (Yale University Press 1969) 96.

clarity, non-contradiction, the possibility of compliance, constancy, and unity between declared rule and official action.⁹ Their internal nature arises from being intricately woven into the fabric of legal principles and moral standards, forming the yardstick against which official behaviour is measured.¹⁰ This contrasts the law's 'external' moral aspect, encompassing deliberations on whether specific issues merit legislative attention. This category covers diverse subjects ranging from polygamy, the exploration of Marxian thought, and religious devotion to the implementation of progressive income taxation and women empowerment.¹¹

Legal Positivism

Legal positivism gained prominence as a response to criticisms aimed at the natural law theory. A significant critique against natural law theory centres on the mistaken belief by natural lawyers that law and morality are closely interconnected.¹² Expanding on this viewpoint, Suri Rathnapala¹³ notes that there can be situations where the law might align with moral principles. However, it's essential to recognise that law and morality are separate ideas and should not be conflated. Consequently, delving into the understanding of either law or morality should not intrude upon one's comprehension of the other.¹⁴ Hence, a legal statute can be considered valid solely based on its correct establishment and adherence to legal procedures, even if it contradicts the moral beliefs held by society. Therefore, positivists conclude that the legitimacy of a law doesn't necessarily depend on its alignment with prevailing moral values.¹⁵

⁹ R Wacks, *Understanding Jurisprudence—An Introduction to Legal Theory* (2nd edn., Oxford University Press 2012) 57.

¹⁰ (n 5) 126.

¹¹ (n 8) 96.

¹² (n 5) 126.

¹³ S Rathnapala, *Jurisprudence* (Cambridge University Press 2009) 21-25.

¹⁴ *ibid.*

¹⁵ *ibid.* 27.

Jeremy Bentham aimed to establish a clear distinction between these two aspects: the factual nature of the law and the normative dimension it should ideally uphold. He contended that law and morality could and indeed should be kept separate, and the principles of natural law were regarded as belonging more to the realm of morality than to that of law, i.e., separation theory. Supplementing his ideology, John Austin rejected the natural law theory's association between law and morality. According to him, laws are essentially commands issued by a political sovereign, and their legitimacy does not depend on their moral content. He introduced the concept of 'positive law,' which refers to valid laws simply because a recognised authority commands them. He distinguished positive law from 'laws set by God' or 'laws of nature,' which were often linked to moral concepts in the natural law tradition.

Another legal positivist, HLA Hart, argued that law and morality share a significant connection, although they are not inherently intertwined.¹⁶ He argues that individuals frequently employ moral language to justify their compliance with the law, and public officials often use moral arguments when explaining and justifying legislative, enforcement, and adjudicative actions.¹⁷ Further, he is sympathetic toward the core ideas of natural law and supports subjecting law to moral evaluation.¹⁸ Hart contends that understanding whether a citizen feels morally obliged to obey the law requires adopting an 'internal' perspective a viewpoint held by a member of the legal system who recognises its legitimacy.¹⁹ This perspective contrasts with the 'external' view, providing insight into citizens' motivations for obeying the law.²⁰ Importantly, Hart emphasises that adherence to the internal perspective doesn't necessarily imply obedience to the

¹⁶ HLA Hart, *Law, Liberty, and Morality* (Stanford University Publishers 1963) 05.

¹⁷ (n 13) 118.

¹⁸ *ibid.*

¹⁹ WC Star, 'Law and Morality in HLA Hart's Legal Philosophy' (1984) 4 (67) *Marquette Law Review* 675.

²⁰ *ibid.*

law for moral reasons.²¹

Legal Realism

Legal realism acknowledges that law and morality can intersect in legal decision-making, but it emphasises the practical and contextual factors that influence judicial outcomes. Freeman notes that while morality may play a role, legal realists recognise that legal decisions are shaped by various considerations, including judges' values, social context, and psychological factors.²² This recognition highlights that morality can indirectly impact legal decisions through judges' subconscious biases, emotions, and societal influences.²³ Supplementing this ideology, one of the most famous realists, Karl Llewellyn, introduced the concept of 'situation sense', highlighting a judge's ability to weigh unique case circumstances and make decisions aligned with fairness and justice, influenced by their values and ethics.²⁴ While Llewellyn didn't explicitly discuss morality, his ideas revealed the interplay between law and moral judgment, showing that societal ethics can influence legal principles even without explicit rules. This underscores the link between law and morality in judicial decisions.²⁵

Another legal realist, Jerome Frank, delved into the psychological factors that impact legal decision-making, illuminating the intricate link between personal values and moral considerations in judicial judgments.²⁶ Although not explicitly focused on moral philosophy, Frank's examination of the psychological dynamics behind legal reasoning highlighted the potential role of judges' moral intuitions in shaping their interpretations of the law.²⁷ He contended that psychological elements like emotions and biases often unconsciously influence judicial outcomes, indirectly implying the impact of morality

²¹ *ibid.* 678.

²² (n 5) 182.

²³ *ibid.*

²⁴ KN Llewellyn, *The Bramble Bush: On Our Law and Its Study* (Oceana Publications 1930) 55-76.

²⁵ *ibid.* 80.

²⁶ J Frank & BH Bix, *Law and Modern Mind* (1st edn., Routledge 2009) 26.

²⁷ *ibid.* 34.

on legal decisions. Frank's ideas enrich the broader understanding that law and morality are intertwined in complex ways within the legal process, underscoring the human element and subjective viewpoints that contribute to law's interpretation and application.²⁸

Dworkin asserts that a society's legal framework is separate from its prevalent moral views.²⁹ He defines popular morality as the collective convictions about justice and ethical principles held by the majority or a moral elite within a community. He argues that a judge's role is not to harmonise the law with public morality but to offer an interpretation that preserves legal integrity.³⁰ He argues that even if the law diverges from popular morality, it can maintain its integrity. Dworkin positions integrity as a moral virtue intrinsic to the law, regardless of specific outcomes. This challenges positivists' assertion that law lacks an inherent link with morality.³¹

The Hart-Devlin Debate

Historically, the classification of homosexuality as a criminal offence has been shaped by moral considerations rooted in religious beliefs. Legal frameworks often reflect societal norms and attitudes prevailing at the time. Traditional moral beliefs have sometimes regarded homosexuality as contrary to established criteria, which informed legal prohibitions.³² Such laws were frequently rooted in conservative viewpoints that considered heterosexuality the societal standard. This perspective often fails to consider the diversity of human relationships and orientations. However, the Wolfenden Report 1957 provided a more inclusive understanding of homosexuality. It recognised the rights and dignity of individuals regardless of their sexual orientation, reflecting a more progressive and equitable societal ethos.³³

²⁸ J Paul, 'Jerome Frank's Contributions to the Philosophy of American Legal Realism' (1958) 3 (11) *Vanderbilt Law Review* 754.

²⁹ (n 13) 149.

³⁰ DB Lyons, 'The Connection Between Law and Morality: Comments on Dworkin' (1986) 36 *Journal of Legal Education* 485.

³¹ *ibid.*

³² *Athula De Silva & Others v. Attorney General & Others* [SC SD 13/2003] (Penal Code (Amendment) Bill case)

³³ (n 1) para 08.

Background

For nearly four centuries, male homosexuality remained classified as a criminal transgression in the United Kingdom, subject to severe penalties such as imprisonment, deportation, or even death.³⁴ The enactment of the Buggery Act of 1533 during the reign of Henry VIII marked the inception of legal persecution against male homosexuality in the United Kingdom. Capital punishment for homosexual relationships endured until 1861, with alternative sentences including incarceration or deportation to Australia.³⁵ While executions for homosexual acts were eventually abolished, discriminatory legislation evolved through the Criminal Law Amendment Act of 1885, which criminalised any form of male homosexual conduct, irrespective of the presence of witnesses. However, notably, unlike its male counterpart, female homosexuality escaped explicit targeting by legal statutes.³⁶

In September 1957, the Committee on Homosexual Offences and Prostitution, chaired by Sir John Wolfenden, issued a comprehensive report to the British Parliament, advocating decriminalising private, consensual homosexual activity among adults. The report rested on two fundamental principles. Firstly, it highlighted the role of criminal law in upholding public order and decency and shielding the public from harm or offence while safeguarding the vulnerable from corruption and exploitation within the area under scrutiny. Secondly, it emphasised the existence of a sphere of private morality beyond the law's jurisdiction. It's important to note that acknowledging this didn't imply any support for personal immorality.

Accordingly, the Wolfenden Report meticulously articulated the philosophical foundation behind its recommendation; 'it is not the role

³⁴ British Library < [³⁵ *ibid.*](https://www.bl.uk/collection-items/wolfenden-report-conclusion#:~:text=For%20400%20years%20male%20homosexuality,but%20public%20attitudes%20and%20acceptance.> accessed 12 August 2023.</p></div><div data-bbox=)

³⁶ *ibid.*

of the law to intervene in matters of immorality *per se*'.³⁷ The report, therefore, proposed to resolve questions of the legitimacy of legally enforcing moral obligations by distinguishing 'immoralities that implicate public interests from immoralities that are merely private'.³⁸ Against laws prohibiting consensual adult homosexual activities, the report urged that 'there must remain a realm of private morality and immorality which is, in brief, and crude terms, not the law's business.'³⁹ The Report also had suggestions for restricting street prostitution, which resulted in the subsequent passing of the Street Offences Act of 1959. This prevented loitering and soliciting in public places for prostitution, and a significant police crackdown followed.⁴⁰

This report sparked a remarkable debate in jurisprudential history, with Lord Patrick Devlin, a High Court judge, initiating the discussion. In the 1959 Maccabean Lecture in Jurisprudence hosted by the British Academy, Lord Devlin contested the Wolfenden Report's declaration that a private realm of immorality exempt from legal intervention is a mistake. His critique gained substantial attention and was met with counter arguments from progressive legal scholars and philosophers. Notably, HLA Hart, a prominent legal philosopher and then Professor of Jurisprudence at Oxford University, responded vigorously to Lord Devlin's arguments, offering a critical analysis of the Maccabean Lecture in the widely read British publication *The Listener*. Over the following years, Devlin and Hart engaged in a celebrated series of published exchanges over the legitimacy of moral legislation.

While Devlin advocated for the necessity of moral laws, Hart opposed the conclusions drawn in the report. These exchanges between Hart and Devlin and the multitude of commentaries they sparked dominated the academic discourse surrounding the legal implementation of moral standards throughout the 1960s and 1970s.

³⁷ (n 1).

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ (n 34).

Their enduring impact continues to shape the trajectory of this discourse. Indeed, Devlin's publication '*The Enforcement of Morals*' and Hart's publication '*Law, Liberty and Morality*' consistently stand as pivotal texts in jurisprudence addressing the validity of moral legislation.

Devlin's Legal Moralism

Devlin's arguments in favour of moral laws are motivated by his feeling as a judge who has to pass sentences in a criminal court that crime should be somehow connected with sin, that is, with 'transgression against divine law or the principles of morality.'⁴¹ Reiterating this idea, he begins his lecture by stating, 'I should feel handicapped in my task if I thought I was addressing an audience with no sense of sin or which thought of crime as something quite different'.⁴²

Devlin considered three questions. The first question is whether society has the right to pass judgment on morals, whether there ought to be a public morality, or whether morals should always be a matter of private judgment. The second question asked whether, if society has a right to pass a judgment, it may use the law to enforce it. The third question asked whether the weapon of the law should be used in all cases or only in some, and, if only in some, what principles should be kept in mind.

Based on these questions, his arguments are two-fold. First, he posits that the inseparable linkage between morals and religion necessitates recognition.⁴³

He contends that no moral framework can establish legitimacy independent of the religious foundation upon which it is constructed. Therefore, he logically asserts that a state valuing its and spiritual principles would logically exercise the enforcement

⁴¹ P Devlin, 'Morals and the Criminal Law' in R Dworkin (ed) *The Philosophy of Law* (Oxford University Press 1977) 68.

⁴² *ibid.* 69.

⁴³ H Hayry, 'Liberalism and Legal Moralism: The Hart-Devlin Debate and Beyond' (1991) 2 (4) *Ratio Juris* 202.

of corresponding moral tenets. In his view, this justifies the potential safeguarding of Christian values within a Western state by criminalising actions that transgress significant Christian moral precepts.⁴⁴

Second, he delves into the intrinsic connection between public morality and societal cohesion. His premise is that the communal structure inherently incorporates morality as an integral element. Consequently, any violation of public morality resonates as an insult to the very essence of society itself. In this intricate interplay, preserving societal integrity necessitates enforcing morals as an imperative means of shielding the fabric of the community. Thus, keeping the moral framework is intrinsically linked to protecting and maintaining the societal order.⁴⁵

Consequently, Devlin's fundamental assertion rested on the concept that criminal law possesses a dual role: safeguarding not only individual well-being but also the collective welfare of society itself.⁴⁶ He contended that criminal law's domain protects the institutions and framework of political and moral ideas essential for harmonious coexistence. This perspective, he argued, necessitates an overarching criminal law that extends beyond solely regulating actions with immediate, identifiable harm to individuals.⁴⁷ This perspective equips Devlin with a counterargument against the Wolfenden Report's conclusions. He contends that practices such as homosexuality and prostitution warrant condemnation and prohibition under criminal law due to their perceived threat to the Christian conception of marriage.⁴⁸

Such a conception, integral to the bedrock of social life in Western

⁴⁴ *ibid.* 205.

⁴⁵ *ibid.*

⁴⁶ RP George, *Making Men Moral: Civil Liberties and Public Morality* (Clarendon Press: Oxford 2002) 68.

⁴⁷ P Devlin, 'Morals and the Criminal Law' <<https://faculty.berea.edu/faculty/butlerj/Devlin.pdf>> accessed 13 August 2023.

⁴⁸ (n 41) 70.

societies, is vulnerable to erosion by these practices. By challenging established norms of sexual morality, individuals engaged in homosexual acts and prostitution evoke not only adverse reactions of ‘intolerance, indignation, and disgust’ from societal members but also jeopardise the prevalent societal structure itself.⁴⁹

Hart’s Critique of Devlin

Hart’s critique of Devlin’s stance found its basis in JS Mill’s renowned ‘harm principle.’⁵⁰ This principle provides that the legitimate exercise of power over an individual within a civilised society is warranted solely to prevent harm to others. Hart dissected Devlin’s advocacy of what has become known as ‘legal moralism’ and discerned two central arguments: the ‘moderate thesis’ and the ‘extreme thesis.’⁵¹ The former asserts that society possesses the right to enforce its moral code to avert societal disintegration. Conversely, the latter contends that society is justified in enforcing its morality to safeguard its unique communal values and way of life.⁵²

Hart’s scrutiny centred on the moderate thesis, which he found problematic due to its reliance on unsubstantiated factual claims. He argued that Devlin lacked substantial empirical evidence to support this thesis. Consequently, Hart perceived the moderate thesis as a circular equation, defining a society through its morality, rendering the argument valid by mere definition.⁵³ According to Hart’s interpretation, challenging a society’s morality amounted to challenging the community itself. Hart dismissed the extreme thesis by highlighting its potential to rationalise the legal imposition of moral values solely based on their widespread acceptance, regardless of their actual content. He was concerned that this

⁴⁹ (n 43) 208.

⁵⁰ DG Brown, ‘Mill on Liberty and Morality’ (1972) 2 (81) *The Philosophical Review* 133.

⁵¹ J Feinberg, ‘Some Unwept Debris From the Hart-Devlin Debate’ (1987) 2 (72) *Springer* 249.

⁵² *ibid.*

⁵³ H Steward, ‘Legality and Morality in H.L.A. Hart’s Theory of Criminal Law’ (1999) 1 (52) *SMU Law Review* 201.

approach might hinder the evolution of societal norms.⁵⁴

Further, Hart's argument against legal moralism provides for other aspects, such as differentiating between harm and offence, distinguishing paternalism from moralism, discerning positive and critical morality, and separating principles of liability from sentencing principles - within criminal law.⁵⁵

Analysis

Numerous critiques can be directed at Devlin's perspective. In his arguments, Delvin contended that the legal imposition of specific moral standards is justifiable within a society if its members generally deem it appropriate. This interpretation gains traction through Hart's introduction of the distinction between positive and critical morality.⁵⁶ He defined positive morality as 'morality that is actively embraced and shared by a specific social collective.'⁵⁷ In contrast, critical morality encompasses 'moral principles employed in critiquing real social structures, including positive morality itself.'⁵⁸ Hart hinged on this differentiation to communicate two distinct notions. First, he emphasized that the query of whether society can employ criminal law to enforce morality is intrinsically a moral query to which the existing practices of a given society offer no definitive answer.⁵⁹

Second, he underscored that assuming society is entitled to employ criminal law for moral enforcement, the question of which ethical principles it may legitimately enforce remains a moral inquiry. Any particular society's actual practices fail to provide a conclusive response to this question.⁶⁰

⁵⁴ (n 43) 203.

⁵⁵ (n 53) 208.

⁵⁶ I Onwuatuegwu & RA Igwebudu, 'The Relevance of H.L.A. Hart's Concept of Law and Morality in the Battle against the Profound Immorality of the Contemporary Society: A Philosophical Reflection' (2020) 2 (4) World Journal of Education and Humanities 24.

⁵⁷ *ibid.*

⁵⁸ *ibid.*

⁵⁹ (n 16) 127.

⁶⁰ *ibid.*

It is argued that Devlin neglected this distinction between positive and critical morality, substantially undermining his position. Devlin maintained that morality - according to his viewpoint - was subject to societal enforcement. Yet, he did not deem a consensus social opinion, labelling behaviour as immoral and deserving of legal prohibition, as a sufficient justification for its criminalisation. In his perspective, the determinative factor was the stance of 'reasonable' or 'right-minded' individuals.⁶¹ He emphasised that ascertaining community morality extended beyond mere head-counting or conducting opinion surveys. Accordingly, he introduced four guiding principles for legislatures to consider when deliberating the enactment of laws aimed at enforcing morals; 'maximum toleration of individual freedom consistent with the integrity of society, conservatism in the face of changing social mores; respect for privacy; and observance of a distinction between moral obligations and moral ideals.'⁶²

However, this assertion can be met with significant criticism. The terms 'reasonable' and 'right-minded' are subjective and lack a clear, universally agreed-upon definition. What may be deemed reasonable or right-minded by one person or group might be perceived differently by another, resulting in ambiguity and inconsistency in applying the law. Further, if legal decisions are solely driven by the viewpoints of specific groups labelled as 'right-minded,' it can potentially reinforce societal biases and perpetuate existing power dynamics. This situation could suppress dissenting perspectives, impeding the growth of societal values. Furthermore, entrusting legal determinations solely to a limited group of 'right-minded' individuals risks neglecting individual autonomy to decide based on their beliefs. This approach might cultivate a paternalistic legal system that dictates acceptable behaviour rather than enabling individuals to exercise moral freedom.

Therefore, it is apparent that moral absolutism can lead to unjust discrimination against individuals or groups whose beliefs and

⁶¹ (n 47).

⁶² (n 46) 72.

behaviours differ from the prevailing moral norms. Hart's view promotes the idea that the law should be impartial and not favour one particular ethical perspective over others, thus reducing the risk of discrimination and ensuring equal treatment under the law. Further, enforcing moral absolutism through law risks giving the state extensive power to intervene in the private lives of citizens.⁶³ Hart's position emphasises limiting state intervention to cases of explicit harm to others, ensuring that personal choices and private matters are protected from unnecessary governmental control. Furthermore, Hart's approach allows for flexibility and adaptability in the legal system. Laws rooted in moral absolutism may become outdated as societal values evolve. Therefore, basing current decisions solely on past opinions might disregard the broader context of human rights and social equality and acknowledge the diversity of human experiences and orientations. This contention becomes apparent concerning the judicial precedents on homosexuality and sodomy.

In the *Lawrence v. Texas*⁶⁴ case, the United States Supreme Court invalidated a Texas law that criminalised consensual same-sex sexual activity among adults. This legal action underscored the significance of valuing diverse lifestyles and acknowledging the influential role of personal freedom in shaping one's moral decisions.

Notably, this case resonates more closely with Hart's standpoint, which places a premium on individual rights and autonomy. Within this context, the case emphasises that societal moral values should not impede an individual's prerogative to make private choices, mainly concerning personal relationships. It directly challenges Devlin's contention that society's survival hinges on enforcing conventional moral norms through legal mechanisms. Instead, this case emphasises the paramountcy of safeguarding individual liberties and maintaining personal dignity. The *Lawrence* case further illuminates the evolving

⁶³ (n 16) 58.

⁶⁴ 539 US 558 (2003).

societal attitudes surrounding individual rights and the celebration of diversity- perspectives that contrast with the moral absolutism advocated by Devlin. It serves as an emblem of the advancing comprehension of how the law should interface with personal morality, accentuating the potential to achieve societal unity without inflexibly enforcing a specific moral code.

The *Navtej Singh Johar & Ors. v. Union of India*⁶⁵ case also provides a compelling analysis when considering private and public morality. The case challenged the constitutionality of section 377 of the Indian Penal Code, which criminalised consensual same-sex sexual activity. The Supreme Court of India ruled that this provision was unconstitutional to the extent that it criminalised such activities. By striking down section 377, the judgment acknowledges that private and consensual acts that might challenge conventional public morality do not necessarily harm society. The decision aligns with the perspective that personal freedom, dignity, and equality should take precedence over conforming to societal norms that may discriminate against specific individuals or groups. It reflects an evolving understanding that individual rights should be protected from public morality when such imposition infringes upon personal autonomy and dignity.

The Contemporary Application of Law and Morality

Discussions about how law and morality interact remain an essential and evolving topic in legal and philosophical conversations. This ongoing dialogue mirrors the changing nature of societies worldwide, where complex issues regarding personal rights, community values, and the role of the law in guiding moral behaviour are under scrutiny. In this context, many legal systems aim to find a balance by respecting fundamental principles like individual freedom and fairness, all while acknowledging broader societal concerns and commonly accepted values.⁶⁶ This ongoing exploration of how law and morality intersect emphasises the significance of comprehending their connection in

⁶⁵ AIR 2018 SC 4321; WP (Crl.) No. 76 of 2016 D. No. 14961/2016.

⁶⁶ (n 5) 165.

influencing the fabric of contemporary society.

Abortion

The relationship between law and morality takes on a complex dimension within the context of abortion law. The abortion debate is characterised by diverse moral perspectives, from those emphasising individual autonomy to others focusing on societal interests. The moral intricacies surrounding abortion challenge the feasibility of imposing a single moral standard through law. On the one hand, individual autonomy stands as a cornerstone, advocating for the right to make reproductive decisions based on personal beliefs and circumstances. On the other hand, societal interests call for protecting potential life, raising questions about the balance between individual rights and collective well-being.⁶⁷ The Hart-Devlin debate on whether the law should enforce morality or remain neutral finds resonance here, with proponents of legal neutrality arguing for a framework that respects individual freedom while ensuring societal order.

Legal precedents such as *Roe v. Wade*⁶⁸ underscore the significance of safeguarding individual autonomy in abortion decisions. This case recognised a woman's right to choose based on privacy considerations. However, introducing the concept of 'undue burden' in *Planned Parenthood v. Casey*⁶⁹ allowed states to impose certain restrictions, reflecting a nuanced equilibrium between individual rights and societal concerns. However, most recently, in *Dobbs v. Jackson Women's Health Organization*⁷⁰, the Supreme Court of the United States of America overturned *Roe v. Wade*⁷¹. This complexity of the abortion debate highlights the intricate interplay

⁶⁷ P Dixit, 'The Legality and Morality of Abortion' (2023) 2 (12) International Journal of Advanced Research in Management and Social Sciences 38.

⁶⁸ 410 US 113 (1973)

⁶⁹ 505 US 833 (1991).

⁷⁰ 597 US (more) 142 S.Ct. 2228, 213 L. Ed. 2d 545, 2022 WL 2276808; 2022 US LEXIS 3057.

⁷¹ (n 68).

between law and morality. Balancing diverse moral viewpoints, protecting individual autonomy, and addressing collective interests present a multifaceted challenge for legal systems. In navigating this landscape, the law plays a pivotal role in shaping the contours of abortion regulations while acknowledging the profound moral dimensions at stake.

Euthanasia

The analysis of euthanasia law within the context of law and morality reveals intricate ethical and legal considerations. Euthanasia, involving the intentional ending of life to alleviate suffering, poses fundamental questions about individual autonomy, societal values, and the law's role in guiding end-of-life decisions. Advocates argue for euthanasia as a dignified choice, highlighting individual autonomy over life and death.⁷² This perspective aligns with the moral principle that individuals should have agency over their bodies. However, opponents stress the sanctity of life and the need for legal safeguards to protect vulnerable individuals from potential abuse.⁷³

Euthanasia law encapsulates the tension between individual autonomy and societal concerns, mirroring the broader law and morality discourse. Legal neutrality proponents contend that the law should provide a framework accommodating diverse moral viewpoints while avoiding the imposition of a single standard. Precedents set by countries like the Netherlands and Belgium offer insights into striking this balance.⁷⁴ These legal frameworks recognise the value of autonomy while incorporating strict safeguards to ensure voluntary, informed, and medically reviewed euthanasia decisions.

The complexities of euthanasia law underscore the intricate relationship between law and morality and the ongoing challenge of harmonising individual rights with societal welfare.

⁷² K Mahmood, 'Legal and Moral Status of Euthanasia' (2007) 1 (2) PJMHS 59.

⁷³ *ibid.*

⁷⁴ L Deliens & G van der Wal, 'The Euthanasia Law in Belgium and the Netherlands' (2003) 362 (9391) *The Lancet* 1239.

Conclusion

The Hart-Devlin debate continues to reverberate through contemporary discussions on the enforcement of morality by law. While Devlin and Hart acknowledge the significance of public morality upheld by legal mechanisms, their differing interpretations-conservative and liberal-underscore the nuanced complexities within this debate. The conflict between private morality safeguarded by individual privacy and the integration of society through public morality remains a focal point of contention. The enduring presence of these issues, misunderstandings, and tensions underscores the ongoing relevance of the Hart-Devlin debate in shaping the contours of legal and moral discourse in the modern era. As societies navigate the delicate balance between safeguarding individual rights and nurturing communal values, the insights gleaned from this debate continue to inform and guide the evolving landscape of law and morality.